



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9642-7]

Disclosure of Confidential Business Information Obtained Under the

Comprehensive Environmental Response, Compensation and Liability Act to EPA

Authorized Representative, South Dakota Department of Environment and Natural Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.310(h)(3) for notice of disclosure to its authorized representative, the South Dakota Department of Environment and Natural Resources (SD DENR), Superfund confidential business information (CBI) which has been submitted to EPA Region 8, Office of Ecosystems Protection and Remediation.

DATES: Comments may be submitted until **[Insert date 30 days from date of publication]**.

ADDRESSES: Comments should be sent to: Sharon Abendschan (Mail Code 8ENF-RC), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.

FOR FURTHER INFORMATION CONTACT: Andrea Madigan (Mail Code 8ENF-L), Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129 (303) 312-6904.

Notice of Required Determinations, Provisions, and Opportunity to Comment:

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (commonly known as “Superfund”) requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records including those relevant to cost recovery. EPA has granted authorized representative status to the State of South Dakota Department of Environment and Natural Resources. Pursuant to 40 CFR 2.310(h)(3), a state or local governmental agency which has duties or responsibilities under CERCLA, or under regulations which implement CERCLA, may be considered an authorized representative of the United States for purposes of disclosure of CBI and may be furnished such CBI upon the agency’s written request, but only if:

- (i) The agency has first furnished to the EPA office, having custody of the information, a written opinion from the agency’s chief legal officer or counsel stating that under applicable state or local law the agency has the authority to compel a business which possesses such information to disclose it to the agency, or
- (ii) Each affected business is informed of those disclosures under this paragraph (h)(3) which pertain to it, and the agency has shown to the satisfaction of an EPA legal office that the agency’s use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

Pursuant to 40 CFR 2.310(h)(4), at the time any information is released to a state or local government pursuant to paragraph 2.310(h), EPA must notify the state or local government that the information may be entitled to confidential treatment and that any knowing and willful

disclosure of the information may subject the state or local government and its employees to penalties in section 104(e)(2)(B) of CERCLA. EPA has determined that SD DENR has satisfied the requirements of subparagraph 40 CFR 2.310(h)(3)(ii) that the agency demonstrate to the satisfaction of EPA that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses. EPA hereby advises affected parties that they are informed of potential disclosures to SD DENR under paragraph 40 CFR 2.310(h)(3), and that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii), incorporated by reference into 40 CFR 2.310(h)(2).

Comments should be sent to: Environmental Protection Agency, Region 8, Sharon

Abendschan (Mail Code 8ENF-RC), Environmental Protection Agency, Region 8, 1595

Wynkoop Street, Denver, CO 80202-1129.

Andrew M. Gaydosh

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA, Region 8.